



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

TERRY SCOTT,
Plaintiff,

v.

PFIZER INC., *et al.*,
Defendants.

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CIVIL ACTION No. 1:06-CV-526

MEMORANDUM ORDER ADOPTING REPORT AND RECOMMENDATIONS

Pursuant to 28 U.S.C. § 636(b)(1)(A) and the Local Rules for the United States District Court, Eastern District of Texas, Appendix B, the Court referred this matter to United States Magistrate Judge Keith F. Giblin for consideration and recommended disposition of case-dispositive pretrial matters. Several dispositive motions are pending before the Court.

On February 4, 2008, Judge Giblin entered his report recommending that the Court grant Defendants Pfizer, Howmedica, and MTG's *Motion for Summary Judgment*. On February 5, 2008, Judge Giblin entered a separate report recommending that this Court grant Defendant Wright Medical's *Motion to Dismiss §§ IX and X of Plaintiff's Amended Petition or, In the Alternative, Motion for a More Definite Statement*; dismiss Plaintiff's claims for malice/fraud and misrepresentation; and deny as moot the *Motion to Dismiss §§ IX and X of Plaintiff's Amended Petition or, In the Alternative, Motion for a More Definite Statement* with respect to the motion for a more definite statement.

To date, the parties have not filed objections to the report and recommendations in accordance with 28 U.S.C. § 636(b) and the Federal Rules of Civil Procedure. Accordingly, having reviewed the record and Judge Giblin's reports, the Court agrees with the Magistrate Judge's findings and recommended disposition. The Court **ORDERS** that the *Report and Recommendation on Motion for Summary Judgment* [Clerk's doc. #56] and the *Report and Recommendation on Motion to Dismiss* [Clerk's doc. #57] are **ADOPTED**. Judge Giblin's findings and conclusions of law are incorporated in support of this order.

In accordance with the recommendations of the Magistrate Judge, it is further **ORDERED** as follows:

-Defendants Pfizer, Howmedica, and MTG's *Motion for Summary Judgment* [Clerk's doc. #37] is **GRANTED**, and those Defendants, Pfizer, Inc., Howmedica, Inc., and MTG Divestures, LLC, are **DISMISSED** from this civil action with prejudice;

-Defendant Wright Medical's *Motion to Dismiss §§ IX and X of Plaintiff's Amended Petition or, In the Alternative, Motion for a More Definite Statement* [Clerk's doc. #29] is **GRANTED** and Plaintiff's claims for malice/fraud and misrepresentation, as set forth in Sections IX and X of his Amended Petition are dismissed, including the corresponding request for exemplary damages, with prejudice;

-Wright Medical's *Motion to Dismiss §§ IX and X of Plaintiff's Amended Petition or, In the Alternative, Motion for a More Definite Statement* [Clerk's doc. #30] is **DENIED** as **MOOT** with respect to the motion for a more definite statement, and

-All other claims asserted by Plaintiff against Defendant Wright Medical would remain, and Defendant Wright Medical Technology, Inc., remains a party in this cause.

SIGNED this the **21** day of **February**, 2008.

A handwritten signature in black ink, appearing to read "Thad Heartfield", written over a horizontal line.

Thad Heartfield
United States District Judge